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Equal Rights Amendment: Support HJ 579

The ACLU of Virginia strongly supports state legislature approval of the Equal Rights Amendment (ERA), which would make Virginia the 38th and final state needed to ratify it to the United States Constitution. The ERA states:

Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.

Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Section 3. The amendment shall take effect two years after the date of ratification.

The ERA was passed by Congress in 1972 and submitted to the states for ratification. Ratification stalled at 35 states in 1977. Yet, in the past two years, Nevada and Illinois have become the 36th and 37th states to ratify the ERA. Only one more state is needed. Virginia should be that state.

Women’s rights are civil rights. Women still face barriers to equality. On average, women are paid 80 cents on the dollar compared to men, with larger gaps faced by women of color. Women are more likely to face poverty and gender-based violence. Despite modest federal protections, women still face pregnancy- and breastfeeding-related workplace discrimination. Without the ERA, the gains toward equality women have made are subject to the whims of Congress and the courts.

Sex discrimination deserves strict scrutiny. When the ERA is passed, sex-based discrimination will face the highest level of judicial scrutiny – the same given to race-based discrimination. Under strict scrutiny, discriminatory laws can only survive if they are narrowly tailored to achieve a government interest. Under the current test used to evaluate sex-based discriminatory laws, they only need to be substantially related to the policy, with no attention to whether less discriminatory means can achieve the same end.

Equal means equal. Eighty-one percent of Virginians support ratification of the ERA. A constitutional amendment will provide the most robust legal protection available to fight sex-based discrimination. Women deserve to be recognized and protected as fully equal citizens with a constitutional ban on sex-based discrimination.